THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
Third Division
Court File No. ______________

Just Truffles, Inc.,
a Minnesota corporation,

Plaintiff,

COMPLAINT

v.

Nonnie Waller's Traditional Southern,
an Ohio limited liability company,

Defendant.

Just Truffles, Inc., a Minnesota corporation, ("Plaintiff"), for its complaint against Nonnie Waller's Traditional Southern, LLC, an Ohio limited liability company, ("Defendant"), states and alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff is a corporation organized and existing under the laws of the State of Minnesota and has its principal place of business at 1363 Grand Ave., St. Paul, MN 55105.
2. Upon information and belief, Defendant is a limited liability company organized and existing under the laws of the State of Ohio and has a principal place of business at 1 Bellbrook Ave., Spring Valley, OH 54370 and/or 1070 Parker Road, Jamestown, OH 45335.
3. Plaintiff reserves the right to amend the Complaint to add additional parties pending the completion of further discovery.
4. Plaintiff is a corporation incorporated under the laws of the State of Minnesota. The Defendant is a limited liability organized under the laws of the State of Ohio having a principal place of business in a state other than the State of Minnesota.
5. The jurisdiction of the federal courts in this matter is based on the matter arising under the Trademark Laws of the United States as set forth in 15 U.S.C. § 1121 and upon 28 U.S. C. § 1338 (b) as hereinafter more fully appears.

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6. Venue in this court is proper pursuant to 28 U.S.C § 1391.

COUNT I – FEDERAL TRADEMARK INFRINGMENT

7. Plaintiff hereby restates and realleges the preceding paragraphs.

8. Plaintiff, since at least as early as 1989, has been and continues to be engaged in the manufacture, advertising, distribution, and sale of a variety of confectionary items, specifically including, but not limited to chocolate truffles. Plaintiff has carried on said business throughout the United States.

9. Plaintiff has, since 1989, manufactured, marketed, advertised, distributed and sold truffles under the distinctive trademark "JUSTRUFFLES" (the "Plaintiff's Trademark"). Plaintiff has prominently displayed the Plaintiff's Trademark in its advertising and distribution. Plaintiff's Trademark has come to be distinctive and recognized, so that members of the purchasing public, seeing the Plaintiff's Trademark identifies it with the Plaintiff and Plaintiff alone.

10. Plaintiff is the owner of the Plaintiff's Trademark. The Plaintiff's Trademark was filed with the United States Patent and Trademark office on July 17, 1996 and a certificate of registration therefore was issued on March 25, 1997. Said registration is presently in full force and effect and is owned by the Plaintiff. By compliance with all applicable regulations, Plaintiff's right to use the Plaintiff's Trademark has become incontestable, and said registration is conclusive evidence under 15 U.S.C. § 1065 of Plaintiff's exclusive right to use the Plaintiff's Trademark in commerce.

11. Notwithstanding Plaintiff's established rights in the Plaintiff's Trademark, the Defendant has, adopted, advertised, and used in commerce in connection with the sale of truffles, goods bearing the mark "Just Truffles" (the "Defendant's Mark"). As of the date of this Complaint, it is unknown how long the Defendant has used the Defendant's Mark.

12. The use of the phrase constituting the Defendant's Mark by the Defendant constitutes an infringement of the Plaintiff's rights described in the Plaintiff's Trademark described above in that, among other things, the use by the Defendant of the Defendant's Mark is likely to cause confusion or mistake and/or deception. The infringement by the Defendant of Plaintiff's right in the Plaintiff's Trademark entitles the Plaintiff to certain remedies,

including, but not necessarily limited to those contained in 15 U.S.C. § 1114 (1).

COUNT II – MINNESOTA STATUORY UNFAIR COMPETITION
(Minn. Stat. §325D.44)

13. Plaintiff hereby restates and realleges the preceding paragraphs.

14. Defendants conduct is a breach of the Uniform Deceptive Trade Practices Act under Minnesota Statutes §325D.44, in that, among other ways, Defendant has engaged in conduct through the use of Defendant's Mark that causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

COUNT III- FEDERAL UNFAIR COMPETITION
15 U.S.C. §1125(A)

15. Plaintiff hereby restates and realleges the preceding paragraphs.

16. Defendant's use in commerce of the Defendant's Mark is in violation of 15 USC § 1125(A).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Just Truffles, Inc., requests the relief of this Court as follows:

1. An Order finding Plaintiff's Trademark is valid and the property of Plaintiff.

2. An Order finding that Defendant has infringed upon Plaintiff's Trademark and engaged in unfair competition through the use of the Defendant's Mark.

3. An Order directing that Defendant, its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them and each of them, be temporarily and thereafter permanently enjoined and restrained from:

a. Using "Just Truffles", or similar combination of words, in connection with the offering for sale or sale of truffles or other confectionaries;

b. Otherwise infringing Plaintiff's Trademarks;

c. Unfairly competing with Plaintiff through the use of the Defendant's Mark or any similar combination of words.

4. An Order that Defendant be directed to file with this Court and serve upon Plaintiff within thirty (30) days after any Order referred to above, a report in writing, under oath setting forth in detail the manner and form in which the Defendant has complied with the injunction or temporary relief.

5. An Order directing a judgment against the Defendant and in favor of the Plaintiff for all damages which may have been incurred by the Plaintiff as a result of the Defendant's infringement, and all other amounts which may be available pursuant to the provisions of 15 USCA Chapter 22, specifically including, but not limited to, Defendant's profits, Plaintiff's costs of this action, and Plaintiffs damages, all of which are in amounts which will be proved at trial.

6. An Order directing a judgment against the Defendant and in favor of the Plaintiff for all damages incurred by Plaintiff as a result of the Defendant's unfair competition, all of which are in amounts which will be proved at trial.

7. An Order directing a judgment against the Defendant and in favor of the Plaintiff for Plaintiff's reasonable attorney's fees pursuant to 15 USC § 1117, or other authority.

8. For such other relief as the Court deems just and proper.

DATED: June 29, 2007

PETERSON, FRAM & BERGMAN
Professional Association

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